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July 26, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: 

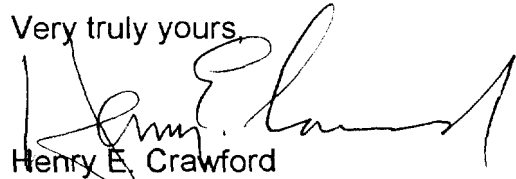
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| In the Matter of<br>Implementation of Section 309(j)<br>of the Communications Act<br>Competitive Bidding<br>PP Docket No. 93-253 |
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Dear Mr. Caton:

Transmitted herewith on behalf of Millin Publications, Inc. are an original and nine (9) copies of its "Reply of Millin Publications, Inc. to Opposition by Pacific Bell and Nevada Bell to Petitions for Reconsideration" as directed to the Commission.

Should any additional information be required, please contact this office.

Very truly yours,

  
Henry E. Crawford  
Counsel for  
Millin Publications, Inc.

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## BEFORE THE

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**JUL 26 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY OF MILLIN PUBLICATIONS, INC. TO OPPOSITION BY PACIFIC BELL  
AND NEVADA BELL TO PETITIONS FOR RECONSIDERATION**

Millin Publications, Inc. ("Millin"), by counsel, pursuant to

## I. INTRODUCTION

1. Millin filed its Petition for Reconsideration on May 26, 1994. That

Petition for Reconsideration was unopposed except for the instant Opposition.

Although the Bells object to Millin's argument that PCS will better serve the public interest as a non-subscription service, the Bells present no argument and offer no evidence as to why PCS should be classified as a subscription service.

They add nothing to a record that is barren of argument or evidence on this

point. Consequently, the Bells' Opposition is without merit and Millin's Petition

for Reconsideration must be granted.

## **II. ARGUMENT**

2. The Bells present no argument why PCS should be classified as a subscription service as opposed to a non-subscription service. They claim instead that Millin "...was the only commenter who seriously disputed this conclusion...."<sup>1</sup> That is not entirely true. Millin was the only commenter who seriously addressed this issue at all. As the Commission itself noted, most of the other commenters in the proceeding "simply assumed that the applications will be auctioned."<sup>2</sup> The Commission had, nevertheless, specifically asked for comment on whether PCS should follow a subscription based model or a non-subscription model.<sup>3</sup> It received no comment on this serious issue except for the comments filed by Millin.<sup>4</sup>

3. The irony is that even now the Bells fail to offer any shred of evidence or analysis on the subscription service issue. Like the other large corporate commenters, the Bells have focused their efforts at influencing the format of the auction to achieve their own ends. The consumer, however, will not play a role in decisions involving the finer points of the auction process. Yet it is consumers who will have to pay the subscription charges that will result from

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<sup>1</sup> Opposition, p. 9.

<sup>2</sup> Opposition, p. 23, ¶ 54.

<sup>3</sup> Notice of Proposed Rule Making, October 12, 1993, p. 39, ¶116.

<sup>4</sup> The Bells seem to imply that the Commission's finding of a subscription service was based on data or argument presented in comments. See, Opposition, p. 9 ("[t]he Commission thoroughly reviewed this issue and found that the comments and its own experience with experimental PCS applications...", emphasis supplied). However, Millin has once again combed through the comments (particularly those mentioned by the Commission in paragraph 54 of the Second Report and Order: Arch Communications, BellSouth, Bell Atlantic, TDS, Time Warner, and UTC) and has found that no party offered specific evidence or argument as to why PCS should be classified as a subscription service rather than as a non-subscription service.

a decision to classify PCS as a subscription service. When they do,<sup>5</sup> we will only be able to look back on a record dominated by game theorists, auction specialists and professional auctioneers. It will be a record devoid of any discussion of the appropriate economic model for this new technology. That, Millin respectfully submits, it not in the public interest.

4. Without intending to reargue its position, non-subscription communications services such as broadcast and recently, the Internet, have thrived and brought near universal service to the public. On the other hand, subscription services such as cellular telephony and cable TV have followed monopolistic marketing models which in turn have either created rarefied markets or ultimately required rate regulation. An open, non-subscription service does not require a monopoly structure and, as in the case of broadcast television and radio, is capable of fueling larger sectors of the American economy as advertisers, vendors and software developers create a multitude of applications for PCS. Millin respectfully submits that to reject this non-subscription model without sound record evidence would be wholly contrary to the public interest.

5. The Bells make an obscure argument that Millin is somehow endorsing competition with cellular subscription based services.<sup>6</sup> That, however, is the opposite of what Millin has consistently maintained in this rulemaking. The pages in the Petition for Reconsideration referenced by the

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<sup>5</sup> According to the Commission's record, that could be several years because, using a subscription service model, first generation PCS will be aimed at an elite market of "mobile professionals" and not the average consumer. *On Banc Meeting on PCS*, Monday, April 11, 1994, p. 33; see also, Petition for Reconsideration, pp. 5-6.

<sup>6</sup> Opposition, pp. 9-10, citing Millin's Petition for Reconsideration at pp. 6-7.

Bells describe the unfortunate aspects of the cellular service which have arisen precisely because it is subscription based. Millin respectfully submits that the way to bring true competition to the cellular industry is not to clone it with another subscription based service, but to initiate a new, non-subscription based PCS that would depend on a wide variety of software applications to reach the mass market.

6. The Bells argue that consumers will best be served by placing PCS licenses "...in the hands of those who value them most via competitive bidding."<sup>7</sup> However, competitive bidding only insures that the licenses will go to the largest companies with the most amount of capital to bid. Steve Jobs, Bill Gates, Mitch Kapor or Thomas Edison would not have been in a financial position to enter this technology at the very time in their careers when they were making their technological breakthroughs. That does not mean that they would not have "valued" the technology. Like the early days of the Internet, personal computers and broadcasting, there are small and underfunded entrepreneurs who could make unique and valuable contributions to the information superhighway. Those voices will be lost in a subscription based PCS which uses cellular telephony as its economic model and auctions as its allocation system.

### **III. CONCLUSION**

7. Consumers will have to pay the subscription fees. That is why Congress required the Commission to specifically find that a given technology is indeed subscription based. The Bells have added nothing to the paltry record on this issue. The fact remains that there is nothing inherently "subscription" about PCS. It is a new technology that is wide ranging in potential applications

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<sup>7</sup> Opposition, p. 10.

and marketing structures. Therefore, the Bells' attempt to foreclose debate without any serious consideration of the potentially more advantages non-subscription PCS is without merit and certainly not in the public interest.

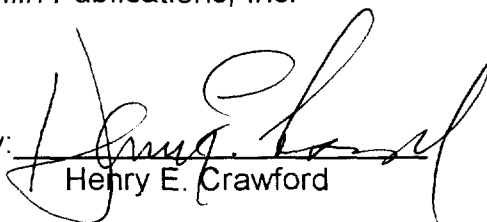
**WHEREFORE**, Millin Publications, Inc. respectfully requests that its Petition to Reconsideration be granted and that the Commission seek further comment and conduct further inquiry into non-subscription based PCS.

July 26, 1994

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Respectfully Submitted,

Millin Publications, Inc.

By:   
Henry E. Crawford

Its Attorney

CERTIFICATE OF SERVICE

I, Deborah C. Silverstein, do hereby certify that copies of the foregoing Reply of Millin Publications, Inc. to Opposition by Pacific Bell and Nevada Bell to Petitions for Reconsideration have been served by United States mail, postage prepaid this 26th day of July, 1994 upon the following:

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